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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,663	10/24/2003	Anjali Abhimanyu Patil	Rev 02-26	9947

7590 09/11/2008  
Revlon Consumer Products Corporation  
Law Department  
237 Park Avenue  
New York, NY 10017

EXAMINER
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MERCIER, MELISSA S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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09/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,663	<b>Applicant(s)</b> PATIL ET AL.	
	<b>Examiner</b> MELISSA S. MERCIER	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-19 and 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 4-8 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9-12, 15-19, 21, 22 and 27-35 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 27, 2008 has been entered.

### ***Claim Objections***

Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1, from which claim 16 ultimately depends, has already limited the second film forming polymer to a silicone acrylate copolymer.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 9-12, 15-19, 21-22, 27-32, and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Patil et al. (US Patent 6,342,209).

Patil discloses cosmetic compositions for application to skin, nails or hair, which contain one or more film forming polymers (column 1, lines 6-8). Suitable for use as the film forming polymer in the compositions are copolymers of silicone and various organic, ethylenically unsaturated monomers, for example silicone/acrylate copolymers (column 3, lines 27-37). Additionally, synthetic polymers with the same structure as claimed in the instant claims (column 3, line 64 through column 4, line 16). Example 6 discloses the use of trimethylsiloxysilicate (column 16). Dimethicone is disclosed as an antifoaming agent (column 6, lines 23-28). Cyclomethicone and isododecane are also disclosed as suitable oils (column 6, lines 61-68; column 7, lines 32-38). The cosmetic compositions of the invention may be in the form of pigments sticks such as lipstick, eye shadow sticks, foundation sticks, and the like. Preferably, these sticks are anhydrous (column 11, lines 38-45). Finally, Patel discloses the composition may incorporate one or more particulates, including, for example, bentonite, diatomaceous earth and montmorillonite, which are clays (column 8, lines 30-62). Example 10 discloses sun blocking creams comprising titanium dioxide (column 17), a well known sun screening agent.

Patil's teachings of the inclusion of a surfactant are limited to one specific formulation (foundation makeup) and not a requirement for the numerous other cosmetic formulations taught, such as nail enamels, pigmented cosmetic sticks, and mascaras.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patil et al. (US Patent 6,342,209) in view of Scavone et al. (US Patent 6,197,286).

The teachings of Patil are discussed above and applied in the same manner.

Patil does not disclose the use of a gellant.

Scavone discloses cosmetic stick formulations comprising gellants (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated gellants into the formulation of Patil since Scavone discloses gellants are common in commercially available cosmetic sticks since they provide a solid matrix within which the cosmetic active and a liquid carrier can be contained with minimal or no liquid syneresis during storage (column 1, lines 29-35). Additionally, it is disclosed the gellants provide the product with sufficient hardness to form a solid stick formulation (column 1, lines 19-22). One of ordinary skill would have had a reasonable expectation of success since both references are drawn to the use of cosmetic stick formulations. The skilled artisan would be looking to optimize the storage and stability of the final product.

### ***Response to Arguments***

Applicant's arguments filed June 27, 2008 have been fully considered but they are not persuasive. Applicant argues the newly amended exclusion of a surfactant equals a teaching away from the Patel reference. The examiner disagrees. As discussed above, Patil's teachings regarding the inclusion of a surfactant are limited to the specific formulation of a foundation. Numerous other examples of formulation in which no surfactant is used or necessary are present.

Applicant's remarks regarding the Loginova reference have been fully considered and are persuasive; therefore, the rejection has been withdrawn.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615